IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No. 4339 of 2002

Between:

M/s Sai Super Foods, Rep. by its Managing Partner
K. Rambabu, S/o. Venkataratnam, Miryalaguda,
Nalgonda District.

..... PETITIONER

AND

1 The Commissioner, Prohibition & Excise, A.P., Hyderabad.
2 The Deputy Commissioner Prohibition & Excise,
Mahaboobnagar.
3 The Excise Sub-Inspector, Bhongir P.S.,
Bhongir, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Wit, order or direction, declaring the action of the respondents in seizing the Jaggery of petitioner under POR No. 520/2001 in respect of way Bill No. E.E. 7603288, dt. 31/1-2-2002 as illegal, arbitrary and violative of Principles of natural justice and further directing the respondents to release the same forthwith.

Counsel for the Petitioner : MR.CH.DHANAMJAYA

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

The Court made the following :

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ORDER :

The petitioner claims to be a businessman. He purchased jaggery and when the same was being transported, the third respondent seized the jaggery and registered a crime being P.O.R.No.520/2001/02 on
1-2-2002. The said crime was registered under Section 34(e) read with 34(a) of Andhra Pradesh Excise Act, 1968, assailing which the present writ petition is filed.

The questions raised in this writ petition are covered by the judgment of a Full Bench of this Court, to which I was a member, in GANESH TRADERS, DHERMAPURI, KARIMNAGAR v. DISTRICT COLLECTOR. After referring to various provisions of the A.P. Excise Act, 1968 the Full Bench laid down principles of law as under.

a. The provisions of the A.P. Excise Act including Sections 13(f) and 34(e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;

b. Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer “has reason to believe” that black jaggery (material) is likely to be used for manufacture of
ID liquor the same can be seized and persons can be

arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge sheet can be filed under Section 34(e) of the Excise Act.

c. In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach under Section 482 of Cr.P.C. and/or Article 226 of the Constitution of India and seek quashing of proceedings provided his case come within well settled principles for quashing F.I.R., charge sheet or criminal case. However, a writ petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor, and

d. As held by the Supreme Court in NASU SHEIKKS case (supra) if the F.I.R. shows the ingredients of offence under Section 34(e) read with Section 13(f) of the Excise Act, a person cannot be heard to say in High Court that he is carrying on business or transporting black jaggery either because he is an agriculturist or businessman. All such pleas are to be raised before appropriate criminal Court.

Following the same, the writ petition is accordingly dismissed. There shall be no order as to costs.

(V.V.S.RAO, J.)

01-07-2005.

Msr.

To

1 The Commissioner, Prohibition & Excise, A.P., Hyderabad.
2 The Deputy Commissioner Prohibition & Excise,
Mahaboobnagar.
3 The Excise Sub-Inspector, Bhongir P.S.,
Bhongir, Nalgonda District.

4 2 CCs to Government Pleader for Prohibition and Excise,

High Court Buildings, Hyderabad.

5 2 CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

W.P.No.4339 of 2002

01-07-2005

(Msr)